

1 CENTER FOR DISABILITY ACCESS  
2 Amanda Seabock, Esq., SBN 289900  
3 Prathima Price, Esq., SBN 321378  
4 Dennis Price, Esq., SBN 279082  
5 Mail: 8033 Linda Vista Road, Suite 200  
6 San Diego, CA 92111  
7 (858) 375-7385; (888) 422-5191 fax  
8 [amandas@potterhandy.com](mailto:amandas@potterhandy.com)

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10 Attorneys for Plaintiff

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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16  
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Mowry Medical Partners, LLC**, a  
21 California Limited Liability  
22 Company

23 Defendant.

24 **Case No.**

25 **Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

26 Plaintiff Scott Johnson complains of Mowry Medical Partners, LLC, a  
27 California Limited Liability Company; and alleges as follows:  
28

29  
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
32 level C-5 quadriplegic. He cannot walk and also has significant manual  
33 dexterity impairments. He uses a wheelchair for mobility and has a specially  
34 equipped van.

35 2. Defendant Mowry Medical Partners, LLC owned the real property  
36 located at or about 632 Mowry Ave, Fremont, California, upon which  
37 “Fremont Medical Plaza” operates, in August 2020.  
38

1       3. Defendant Mowry Medical Partners, LLC owns the real property  
2 located at or about 632 Mowry Ave, Fremont, California, upon which  
3 "Fremont Medical Plaza" operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13

14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California's Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to Fremont Medical Plaza in August 2020 with the  
28 intention to avail himself of its services motivated in part to determine if the

1 defendants comply with the disability access laws.

2       9. Fremont Medical Plaza is a facility open to the public, a place of public  
3 accommodation, and a business establishment.

4       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5 to provide wheelchair accessible parking in conformance with the ADA  
6 Standards as it relates to wheelchair users like the plaintiff.

7       11. Fremont Medical Plaza provides parking to its customers but fails to  
8 provide wheelchair accessible parking.

9       12. A problem that plaintiff encountered is that the parking stalls and access  
10 aisles marked and reserved for person with disabilities had slopes that  
11 exceeded 2.1%.

12       13. Plaintiff believes that there are other features of the parking that likely  
13 fail to comply with the ADA Standards and seeks to have fully compliant  
14 parking available for wheelchair users.

15       14. On information and belief the defendants currently fail to provide  
16 wheelchair accessible parking.

17       15. These barriers relate to and impact the plaintiff's disability. Plaintiff  
18 personally encountered these barriers.

19       16. As a wheelchair user, the plaintiff benefits from and is entitled to use  
20 wheelchair accessible facilities. By failing to provide accessible facilities, the  
21 defendants denied the plaintiff full and equal access.

22       17. The failure to provide accessible facilities created difficulty and  
23 discomfort for the Plaintiff.

24       18. The defendants have failed to maintain in working and useable  
25 conditions those features required to provide ready access to persons with  
26 disabilities.

27       19. The barriers identified above are easily removed without much  
28 difficulty or expense. They are the types of barriers identified by the

1 Department of Justice as presumably readily achievable to remove and, in fact,  
2 these barriers are readily achievable to remove. Moreover, there are numerous  
3 alternative accommodations that could be made to provide a greater level of  
4 access if complete removal were not achievable.

5 20. Plaintiff will return to Fremont Medical Plaza to avail himself of its  
6 services and to determine compliance with the disability access laws once it is  
7 represented to him that Fremont Medical Plaza and its facilities are accessible.  
8 Plaintiff is currently deterred from doing so because of his knowledge of the  
9 existing barriers and his uncertainty about the existence of yet other barriers  
10 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
11 discriminatory barriers again.

12 21. Given the obvious and blatant nature of the barriers and violations  
13 alleged herein, the plaintiff alleges, on information and belief, that there are  
14 other violations and barriers on the site that relate to his disability. Plaintiff will  
15 amend the complaint, to provide proper notice regarding the scope of this  
16 lawsuit, once he conducts a site inspection. However, please be on notice that  
17 the plaintiff seeks to have all barriers related to his disability remedied. See  
18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
19 encounters one barrier at a site, he can sue to have all barriers that relate to his  
20 disability removed regardless of whether he personally encountered them).

21

22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
23 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
26 again herein, the allegations contained in all prior paragraphs of this  
27 complaint.

28 23. Under the ADA, it is an act of discrimination to fail to ensure that the

1       privileges, advantages, accommodations, facilities, goods and services of any  
2       place of public accommodation is offered on a full and equal basis by anyone  
3       who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
4       § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 5           a. A failure to make reasonable modifications in policies, practices,  
6           or procedures, when such modifications are necessary to afford  
7           goods, services, facilities, privileges, advantages, or  
8           accommodations to individuals with disabilities, unless the  
9           accommodation would work a fundamental alteration of those  
10          services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11          b. A failure to remove architectural barriers where such removal is  
12          readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
13          defined by reference to the ADA Standards.
- 14          c. A failure to make alterations in such a manner that, to the  
15          maximum extent feasible, the altered portions of the facility are  
16          readily accessible to and usable by individuals with disabilities,  
17          including individuals who use wheelchairs or to ensure that, to the  
18          maximum extent feasible, the path of travel to the altered area and  
19          the bathrooms, telephones, and drinking fountains serving the  
20          altered area, are readily accessible to and usable by individuals  
21          with disabilities. 42 U.S.C. § 12183(a)(2).

22       24. When a business provides parking for its customers, it must provide  
23       accessible parking.

24       25. Here, accessible parking has not been provided in conformance with the  
25       ADA Standards.

26       26. The Safe Harbor provisions of the 2010 Standards are not applicable  
27       here because the conditions challenged in this lawsuit do not comply with the  
28       1991 Standards.

1       27. A public accommodation must maintain in operable working condition  
2 those features of its facilities and equipment that are required to be readily  
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4       28. Here, the failure to ensure that the accessible facilities were available  
5 and ready to be used by the plaintiff is a violation of the law.

6

7 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
9 Code § 51-53.)

10     29. Plaintiff repleads and incorporates by reference, as if fully set forth  
11 again herein, the allegations contained in all prior paragraphs of this  
12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
13 that persons with disabilities are entitled to full and equal accommodations,  
14 advantages, facilities, privileges, or services in all business establishment of  
15 every kind whatsoever within the jurisdiction of the State of California. Cal.  
16 Civ. Code § 51(b).

17     30. The Unruh Act provides that a violation of the ADA is a violation of the  
18 Unruh Act. Cal. Civ. Code, § 51(f).

19     31. Defendants’ acts and omissions, as herein alleged, have violated the  
20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
21 rights to full and equal use of the accommodations, advantages, facilities,  
22 privileges, or services offered.

23     32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
24 discomfort or embarrassment for the plaintiff, the defendants are also each  
25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
26 (c).)

27     33. Although the plaintiff encountered frustration and difficulty by facing  
28 discriminatory barriers, even manifesting itself with minor and fleeting

1 physical symptoms, the plaintiff does not value this very modest physical  
2 personal injury greater than the amount of the statutory damages.

3

4

**PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide  
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the  
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
9 plaintiff is not invoking section 55 of the California Civil Code and is not  
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. Damages under the Unruh Civil Rights Act, which provides for actual  
12 damages and a statutory minimum of \$4,000 for each offense.

13 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15  
16 Dated: January 29, 2021

CENTER FOR DISABILITY ACCESS

17  
18 By: \_\_\_\_\_  
19

20 Amanda Seabock, Esq.  
21 Attorney for plaintiff